

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

ROSE COULTER-OWENS,  
individually, and on behalf of all others  
similarly situated,

Plaintiff,

v.

TIME INC., a Delaware Corporation,

Defendant.

Case No. 2:12-cv-14390-GCS-MKM

Hon. George C. Steeh

**DECLARATION OF ARI J. SCHARG**

I, Ari J. Scharg, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am an adult over the age of 18 and a resident of the State of Illinois.

I am a partner at the law firm of Edelson PC, which has been retained to represent Plaintiff Rose Coulter-Owens (“Plaintiff”) in this matter and I am admitted to practice before this Court. I make this Declaration in support of Plaintiff’s Motion for Summary Judgment, and am fully competent to do so. I have personal knowledge of all matters set forth herein unless otherwise indicated, and, if called upon to testify, I could and would competently do so.

2. Attached hereto as Exhibit A is a true and accurate copy of excerpts from Defendant’s Responses to Plaintiff’s First Set of Interrogatories.

3. Attached hereto as Exhibit B is a true and accurate copy of excerpts of the transcript of the deposition of Plaintiff Rose Coulter-Owens.

4. Attached hereto as Exhibit C is a true and accurate copy of excerpts of the transcript of the Rule 30(b)(6) deposition of Time's corporate designee and Vice President of Marketing Operations for the Consumer Marketing Division, Scott Breininger.

5. Attached hereto as Exhibit D is a true and accurate copy of excerpts from Defendant's Responses to Plaintiff's Second Set of Interrogatories.

6. Attached hereto as Exhibit E is a true and accurate copy of a document entitled "Time Incorporated – Agency FTP File Specifications 900 Byte Layout." This document was produced by Time in this matter at Bates TIME\_RCO\_0047660-68, and lists fields that Time Customer Service may receive from third party sellers to fulfill subscriptions (including, among others, magazine title (*id.* at 0047660-61) and customer name/address (*id.* at 0047663-64)) from such third parties.

7. Attached hereto as Exhibit F are true and accurate copies of publicly accessible documents that demonstrate the subscriber lists Time makes available in connection with its customer list rental business, and demonstrate the breadth of the selects that Time lets its list rental customers use to target specific portions of Time's subscriber base ("Time Datacards"). These documents were produced by Plaintiff in this matter at Bates COULTER-OWENS\_000188-226.

8. Each of the Time Datacards appearing in Exhibit F was created by

searching for Time-associated mailing lists (i.e., whether associated to Time Inc., generally, or to either the *TIME*, *Fortune*, or *Real Simple* magazines specifically) on the website <http://lists.nextmark.com/> on January 30, 2015, and then creating true and accurate screenshots of the applicable search results.

9. For example, the datacard appearing at COULTER-OWENS\_000192-93 (entitled “Time Inc. African American Masterfile Mailing List”) was found by querying the lists.nextmark.com website using a Google search (“site:lists.nextmark.com ‘time inc. african american’ ”), clicking the first search result, and capturing a screenshot of the resulting page.

10. Attached hereto as Exhibit G is a true and accurate copy of a document entitled “Amended and Restated Statement of Work #001 to Services and Data Use Agreement,” entered into between Time and Acxiom Corp. on March 31, 2009 (“Time-Acxiom Restatement of Work”). This document was produced by Time in this matter at Bates TIME\_RCO\_000885-995.

11. Attached hereto as Exhibit H is a true and accurate copy of a document entitled “Wiland Direct Cooperative Database Agreement for Publishers” (“Time-Wiland Contract”). This document was produced by Time in this matter at Bates TIME\_RCO\_000212-222.

12. Attached hereto as Exhibit I are a series of true and accurate screenshots from the Wiland, Inc. website, as it existed as of March 13, 2013.

Included in Exhibit I are screenshots of the following URLs:

- a. About Us (<http://wiland.com/about>)
- b. Publishing (<http://wiland.com/market/publishing>)
- c. New Subscriber Acquisition  
(<http://wiland.com/market/publishing/service/acquiring-new-subscribers>)
- d. Reactivating Expired Subscribers  
(<http://wiland.com/market/publishing/service/reactivating-expired-subscribers>).

13. Attached hereto as Exhibit J is a true and accurate copy of documents entitled “Database Agreement Addendum Adding New Brands” (“Amendment to the Time-Wiland Contracts”). These documents were produced by Time in this matter at Bates TIME\_RCO\_008051, 8059, and 8088, and show the dates that Time added its subscriber lists for *TIME*, *Fortune*, and *Real Simple* magazines to the Wiland cooperative database.

14. Attached hereto as Exhibit K is a true and accurate copy of document entitled “Time Inc. 2012 Guide to Top Lists for Fundraising.” This document was produced by Time in this matter at Bates TIME\_RCO\_009276-79.

15. Attached hereto as Exhibit L are true and accurate copies of documents describing the yearly review of Time’s list rental and top 25 mailers for

2012 (“Time’s 2012 List Rental Corporate Overview”). These documents were produced by Time in this matter at Bates TIME\_RCO\_001657-62.

16. Attached hereto as Exhibit M is a true and accurate copy of the document entitled “Services and Data Use Agreement” (“Time Acxiom Contract”). This agreement was originally entered into between Acxiom and Southern Progress Corporation (“SPC,” a publisher that Time acquired in 1985) as of May 3, 2006. Other documents produced by Time in this matter show that all of SPC’s rights, titles, and interests in and to the agreement were transferred and assigned to Time as of March 31, 2009—at which time Time assumed and agreed to perform and discharge all of SPC’s obligations relating to the agreement (subject to amendments to that agreement). The document was produced by Time in this matter at Bates TIME\_RCO\_001001-20.

17. Attached hereto as Exhibit N is a true and accurate copy of documents listing participants of the Wiland program and their usage in 2010. These documents were produced by Time in this matter at Bates TIME\_RCO\_003644-49.

18. Attached hereto as Exhibit O is a true and accurate copy of Wiland promotional materials. These documents were produced by Time in this matter at Bates TIME\_RCO\_008093-8114.

19. Attached hereto as Exhibit P is a true and accurate copy of a document showing *Real Simple*’s in-magazine “opt-out” notice. This document

was produced by Time in this matter at Bates TIME\_RCO\_047515-18.

20. Attached hereto as Exhibit Q is a true and accurate copy of a document showing *Fortune's* in-magazine "opt-out" notice. This document was produced by Time in this matter at Bates TIME\_RCO\_047405-7.

21. Attached hereto as Exhibit R is a true and accurate copy of a document showing *TIME's* in-magazine "opt-out" notice. This document was produced by Time in this matter at Bates TIME\_RCO\_047162-63.

I declare under penalty of perjury that the foregoing is true and correct.  
Executed this 31<sup>st</sup> day of August, 2015 at Chicago, Illinois.

/s/ Ari J. Scharg

**CERTIFICATE OF SERVICE**

I, Ari J. Scharg, an attorney, certify that on August 31, 2015, I served the above and foregoing ***Declaration of Ari J. Scharg*** by causing true and accurate copies of such paper to be filed and transmitted to all counsel of record via the Court's CM/ECF electronic filing system.

/s/ Ari J. Scharg